

## **PURCHASE ORDER TERMS AND CONDITIONS**

**DEFINITIONS** As referenced herein, "District" refers to the San Diego Community College District. "Contractor" refers to the vendor/supplier named herein, and any of the Contractor's suppliers relevant to this order; and "Contract" refers to the Purchase Order.

**SPECIFICATIONS OF MATERIALS/SERVICES** Contractor agrees to provide all materials and/or services in accordance with the specifications set forth in this Contract, including description, quantity, pricing, delivery date, and delivery point.

**DELIVERY TERMS** When the Contract states FOB Destination, Contractor agrees to include all delivery and transportation costs in the unit price of the materials or services provided. When the Contract states FOB Shipping Point, the Contractor agrees to prepay in full the transportation and delivery charges and itemize the actual costs on the invoice to the District as a separate line item. The District is exempt from paying tax on transportation. Original receipted express or freight bills must accompany invoice. **THE DISTRICT WILL NOT ACCEPT FREIGHT COLLECT SHIPMENTS.**

Contractor must include an itemized packing list with each shipment resulting from this Contract. The following information must be itemized: the Purchase Order number, delivery address, material description, quantity ordered and shipped. Contractor is required to write the "Deliver To" address and Purchase Order number on the outside of each package delivered. Failure to do so will delay inspection, acceptance, and payment by the District.

The District does not encourage partial shipments of materials unless such materials are ordered on a Blanket Purchase Order. Final acceptance of an order by the District will not occur until all materials and/or services ordered has been received and inspected.

**INSPECTION OF MATERIALS AND SERVICES** Any materials and/or services supplied under this Contract are subject to inspection by the District before final acceptance and payment. Payment by the District shall not terminate the District rights to inspect, and no inspection shall be deemed to constitute acceptance. Nonconforming materials or service may be rejected at any time by the District prior to final acceptance.

All materials rejected by the District shall be at once removed by the Contractor, and shall be replaced by satisfactory materials. All services rejected by the District shall be at once redone by the Contractor to the District's satisfaction. The Contractor shall assume responsibility for and pay the cost associated with any removal of rejected materials and/or rework of service, without expense to the District.

**WARRANTY** Contractor warrants that all materials furnished hereunder, whether manufactured by Contractor or by others, is free from defects in materials and workmanship; conforms to applicable specifications, drawings, samples and descriptions; if not of Contractor's design, is free from design defects; and conforms to applicable rules, regulations, and laws of the State of California and United States of America.

Contractor further warrants that the materials may be shipped, sold, and used in a customary manner without violation of any law, ordinance, rule or regulation of any government or administrative body. Contractor also warrants that neither the materials nor its normal use or resale will infringe any patents, trademarks, or copyrights now existing or hereafter issued by the United States or any foreign country. Contractor agrees to assign to the District, at the District's request, all rights Contractor may have against manufacturers or distributors for breach of warranties relating to those materials. Contractor agrees to execute any documents of assignment that the District may request.

Notwithstanding any usage of trade or course of dealing between the parties, Contractor's liability for breach of any warranty, express or implied, shall include (1) replacement or repair of defective materials, or, at the District's option, refund of the purchase price; and (2) any general, special, or consequential damages to the District proximately caused by the breach of warranty. The District recognizes no exclusions, limitations, or disclaimers of warranty other than those expressly recited in this Contract.

**INVOICES** The District shall pay Contractor, upon the submission of a proper invoice, the prices stipulated for materials and/or services delivered and accepted by the District, less deductions and discounts, if any, as herein provided. With the exception of Blanket Purchase Orders, or unless otherwise stated herein, payment shall only be made to the Contractor after all materials and/or services ordered on this Contract has been received and accepted by the District.

Contractor must submit invoices in duplicate. Invoices must be itemized, detailing description of the item(s); quantity ordered and shipped of each item; unit price and extended cost for each item; sales tax; delivery or freight charges, if applicable; Purchase Order Number and delivery address.

Cash discounts for prompt payment of invoices will be computed by the District from the date of acceptance of the ordered materials and/or services by the District, provided auditable invoices are then on file with the District. Prompt payment cash discounts of less than 15 days will be paid as NET 30 days by the District.

The District will not pay packaging, crating, delivery or insurance charges, unless this Contract specifically so states.

**GOVERNING LAW** Contractor agrees that this Contract shall be governed by and construed in accordance with the laws of the State of California, including the Education Code, Public Contracts Code, and any other relevant laws.

**HOLD HARMLESS** Contractor agrees to indemnify and to hold free and harmless the District, its officers, employees and agents, from all loss, liability, damages, costs or expenses including reasonable legal expenses, and court costs that may or might at any time arise or be asserted against District, its officers, employees and agents, arising by reason of, in the course of, or in connection with, the performance of this Contract including any loss, liability, damages, costs or expenses resulting from the negligence of both Contractor and District, but excluding any loss, liability, damages, costs or expense resulting from the sole negligence of the District.

**INDIVIDUAL CONTRACTS** Contractor agrees that this Contract will be executed individually and is separate and apart as to performance from other contracts with the District. Efforts by the Contractor to modify, change, or connect contracts for any purpose other than that expressly stated herein are strictly prohibited. A valid purpose includes the right of the Contractor and/or District to combine or credit off-setting debts in the case of multiple contracts.

**ASSIGNMENT OF CONTRACT** Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof, or any rights accruing thereunder, title or interest therein, funds to be received hereunder, or any power to execute the same without the written consent of the District. Notice is hereby given that the District will not honor any assignment made by the Contractor unless the consent in writing, as indicated herein, has been given.

**RIGHT TO MAKE CHANGES** The District reserves the right to make Changes to this Contract. All notice of changes will be issued exclusively by the Purchasing and Contract Services Manager, or designee, and communicated to the Contractor either verbally or in writing. When a verbal change is made to a Contract by the District, the District will confirm that change in writing. Changes made to this Contract without the prior written consent of the Purchasing and Contract Services Manager will not be honored.

If such changes affect the cost of or the time required for performance of this Contract, an equitable adjustment in the price or delivery, or both, shall be made. Any claim of Contractor for an adjustment must be made in writing to the District's Purchasing & Contract Services Manager within thirty (30) days from the date of receipt by Contractor of notification of such change unless the District waives this condition. Nothing in this section shall excuse the Contractor from proceeding with performance of the Contract as changed hereunder.

**CANCELLATION FOR CONVENIENCE OF THE DISTRICT** The District reserves the right to cancel this Contract for convenience in part or in its entirety upon thirty (30) day's written notice at no cost to the District except for acceptable materials and/or services rendered prior to the termination date. Cancellation would normally be reserved for reasons such as unsatisfactory service by the Contractor, reduction in District funding, reduction in course content or enrollment, or change in scope of District programs and/or policies.

**CANCELLATION FOR DEFAULT BY THE CONTRACTOR** The District may by written notice terminate this Contract for Contractor's default, in whole or in part, at any time, if Contractor refuses or fails to comply with the provisions of this Contract, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of the materials or perform the services within the time specified or any written extension thereof, in such event, the District may purchase or otherwise secure the materials or services, and except as otherwise provided herein, Contractor shall be liable to the District for any procurement costs incurred by the District in excess of the costs which the District would have had to pay under this Contract.

**FORCE MAJEURE** If the District determines that the Contractor has been delayed in the work due to causes beyond the control and without the fault of negligence of Contractor, the District may extend the time for completion of the work called for by this Contract, when promptly applied for in writing by the Contractor.

**DISTRICT RIGHTS AND REMEDIES** The rights and remedies of the District stated in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

**PROTECTION OF WORK AND PROPERTY** Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the execution of this Contract and shall be responsible for the proper care and protection of District property and all materials provided. All work shall be performed solely at the Contractor's risk. Contractor shall take all necessary precautions for safety of all personnel on the work site and shall comply with all applicable safety laws and codes to prevent accidents or injury to persons on or about the premises where work is being performed.

**ACCESS TO DISTRICT FACILITIES (SERVICE CONTRACTS)** All employees of the Contractor on contracts involving on-site services shall be required to wear District-issued identification badges while on District property. These badges will be obtained from the District Facilities Management Office located at the District Offices.

The Contractor shall obtain permission from the District's point of contact, and the respective site's Facilities Office, to enter offices and classrooms to perform work under this Contract. The Contractor's access to secured areas will be provided by appointment and coordinated by the District's point of contact with the site, Facilities Office, or District College Police.

**INSURANCE (SERVICE CONTRACTS)** When this Contract includes on-site or depot services by the Contractor, Contractor shall maintain such public liability and property damage insurance in an amount not less than \$1,000,000.00; fire insurance in an amount not less than full replacement cost of District equipment on the Contractor's premises; and insurance covering special hazards such as automotive and trucks in an amount not less than \$1,000,000.00, as shall protect Contractor and the District from all claims for personal injury, including accidental death, as well as all claims of property damage arising from operations under this Contract. The District shall be added as an insured under said policies of insurance. Said policies of insurance shall provide for a 30-day written notice to District before cancellation or materials change.

Contractor shall require its subcontractors, if any, to take out and maintain similar public liability and property damage insurance in amounts as hereinafter set forth. Contractor shall not commence work nor shall it allow any Subcontractor to commence work under this Contract until it has obtained all required insurance and certificates, which have been delivered to and approved by the District Purchasing and Contract Services Manager.